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In the
Supreme Court of the United States

OCTOBER TERM, 1946

No. 1415

A. G. COLLINS and NOLA Z. COLLINS,

Petitioners,

VERSUS

UNITED STATES OF AMERICA and EMMA LEE COLLINS, now McCRUMMEN,

Respondents.

RESPONSE ON BEHALF OF EMMA LEE COLLINS, NOW McCRUMMEN

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JUNE, 1947.

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TABLE OF CASES

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A photo-stat copy of the original change of beneficiary is shown at Pages 7-9 of the Record. Based upon this change of beneficiary and the other facts found by the court (R. 19-24), all of which were unassailed below, the trial court concluded:

> "It is my conclusion from all the evidence that it was the intention, purpose and desire of the insured that plaintiff be the beneficiary of his insurance. He probably thought he had effected such a change."

The Circuit Court of Appeals concluded (R. 36):

"As pointed out, attempts by an insured to change the beneficiary will be liberally construed if the intent to effect the change is clear and reasonable steps are taken by the insured to bring about such a change. In such a case, technicalities will not be permitted to thwart the express desire of the insured, and a court of equity will treat as done that which ought to be done. If this is so in ordinary commercial insurance, it should be even more so in a case like this. This was government insurance, provided and made available to members of the armed forces by the government. Only members of the armed forces could obtain this insurance. It was made available to them because of the interest the government had in them and those dependent upon them. The government had a paternalistic interest in the members of its armed forces and in the welfare of their families. For these reasons it made this insurance available to them which they could not have obtained otherwise, without any thought of profit; in fact, knowing that it would incur substantial financial loss in writing the insurance. In view of all this, it is unreasonable to conclude that the government intended to encircle the right to change the beneficiary with technicalities and make such a change difficult of accomplishment. It is more reasonable to assume that all the government intended to require was satisfactory evidence of the intent of the insured to change the beneficiary, together with satisfactory evidence showing positive action on his part to effectuate such intent, and that when this is shown, legal technicalities relating to ministerial acts or perfunctory acts will be brushed aside in order to carry out the expressed will and intent of the insured soldier. This, we think, is clearly borne out by those portions of the regulation adverted to. They clearly indicate that the government did not consider the receipt of notice during the lifetime of the insured soldier as necessary to a valid change of beneficiary, and that it was the intent of the government to recognize such change

after the soldier's death upon receipt of satisfactory proof that during his lifetime he had not only expressed an intent to change the beneficiary but had taken reasonable steps to evidence such change."

In the Circuit Court of Appeals the Government filed a brief in which it admitted respondent had established her right to this insurance.

But the petitioners would have this Court review this case for the purpose of overturning long established rules of law applicable to such cases and instead,

(1) strictly construe the statute and regulations instead of liberally construing them as has always been done;

(2) establish a different standard of conduct as between men in the armed forces at home and abroad;

(3) hold, as has not heretofore been done in any similar adjudicated case respondent has found, that the change of beneficiary had to be received by or mailed to the Veterans Administration before death.

The rule of liberal construction of the statute and regulations is founded upon broad principles of equity jurisprudence and is demanded by the very purpose of the statute and regulations. There is nothing in this case justifying a departure from this rule.

Neither the statute nor the regulations permit, require or justify a different standard or rule as between men at home and men abroad in our armed forces.

Petitioners are not able to cite one case from any jurisdiction supporting their contention that it was neces-

sary that the change of beneficiary be received by the Veterans Administration or mailed to it before the death of the soldier. Such is not the law; nor is there just reason for such a law or decision. Cases are cited by the Circuit Court of Appeals in support of this statement. Most of these cases arose over War Risk Insurance policies.

In reinacting the statute and providing for National Service Life Insurance Policies (Title 38 USCA, Sec. 445 as amended by Section 617 of the National Service Life Insurance Act of 1940) the Congress made no changes. Thus in effect giving Legislative sanction to the large body of judicial opinion construing the War Risk Insurance Statute and the regulations thereunder, even though there the regulations provided that to be effective the change of beneficiary had to be received and recorded in the Veterans' Bureau. 26 Fed.(2d) 484. Apparently for the purpose of giving administrative sanction to the forwarding of changes of beneficiaries after death the new regulations specifically provide that this may be done by an agent of the soldier. Thus evidently intending to eliminate the controversies that arose under the original statute wherein it was contended that such could not be done.

The change of beneficiary which deceased executed was prepared and furnished by the Veterans Administration and had printed on it (R. 9):

> "Upon receipt by the Veterans Administration, a valid designation or change of beneficiary shall be deemed to be effective as of the date of execution; Provided, that any payment made before proper notice of

> designation or change of beneficiary has been received in the Veterans Administration shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments."

A part of the regulations and clearly saying to the insured that it is not necessary to the validity of the change that it be recieved by or forwarded to the Veterans Administration before the death of the soldier. If such were necessary to the validity of a change of beneficiary then there would be no purpose and force in the quoted part of the regulations. printed on the change of beneficiary for the information of the insured.

The primary intent of a policy of insurance is that the company shall make payment on the death of the insured. The question as to who is entitled to payment is a secondary one. 46 C. J. S. 1154. A beneficiary has no vested interest in a policy such as is involved here. 46 C. J. S. 1173. A change of beneficiary does not constitute a new contract. 46 C. J. S. 1175; *Pendleton* v. *Great Southern Life Ins. Co.* (Okla.), 273 Pac. 1007.

If it be felt that the designation of an agent was necessary here notwithstanding the circumstances with reference to the duplicate original change of beneficiary found in the officer's 201 file as shown in findings VIII and IX (R. 22-23) and other findings, it is respondent's contention that she met this burden as shown by findings V, VI and VII (R. 21). The death of the officer did not operate to revoke the agency in this case.

Spurr v. *Pryor and Seeks* (Okla.), 230 Pac. 267;
Catlin v. *Reed et al.* (Okla.), 283 Pac. 549;
Norris v. *Norris*, 145 Fed. (2d) 99;
Equitable Life Ins. Soc. v. *Baumgardner*, 55 Fed. Supp. 985.

The Government filed an answer in the trial court in the nature of an Interplea, wherein it admitted liability and willingness to pay and asked the court to determine the person entitled to the benefits of the policy (R. 14). It also filed a brief in the Circuit Court of Appeals, in which it admitted respondent's right to the proceeds of the policy. The regulation in question being for the benefit of the Government, could be and was thus waived by it, leaving naught to be determined save the real purpose, intention and desire of the insured, which is not disputed here.

Johnston v. *Kerns* (Calif.), 290 Pac. 640;
Sun Life Assur. Co. of Canada v. *Sutter et al.* (Wash.), 95 Pac. (2d) 1014;
Claffy v. *Forbes* (D. C.), 280 Fed. 233;
Ambrose et al. v. *United States* (D. C.), 15 Fed. (2d) 52;
Kaschefsky v. *Kaschefsky et al.*, 110 Fed. (2d) 836.

CONCLUSION

Respondent respectfully submits she fully met the burden of establishing a valid change of beneficiary of the policy here involved; that the decision of the Circuit Court

of Appeals is in harmony and keeping with the purposes and intent of the governing statute and regulations and the decisions of this Court and other Circuit Courts of Appeals besides being just, fair and reasonable. On account of all of which respondent asks that the Petition for Writ of *Certiorari* be denied.

Respectfully submitted,

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